

Letter of Findings: 04-20191567
Gross Retail and Use Tax
For the Tax Year 2016

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual demonstrated that the transfer of a truck from a family friend was a gift, and that tax was paid by the family friend upon his purchase of the truck. Use tax was therefore improperly assessed on Individual's receipt of the truck.

ISSUE

I. Gross Retail and Use Tax - Imposition.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-4-1; IC § 6-8.1-5-1; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *Maurer v. Indiana Dep't of State Revenue*, 607 N.E.2d 985 (Ind. Tax Ct. 1993); *Monarch Beverage Co. v. Indiana Dep't of State Revenue*, 589 N.E.2d 1209 (Ind. Tax Ct. 1992); Sales Tax Information Bulletin 40 (August 1991).

Taxpayer protests the Indiana use tax imposed for tax year 2016.

STATEMENT OF FACTS

Taxpayer is an individual who received a truck from a family friend. This friend received the truck from his employer, who would only sell trucks to employees. Taxpayer paid his friend's employer the full purchase price of the truck, after which the truck's title was transferred to Taxpayer's friend. The Indiana Bureau of Motor Vehicles ("BMV") collected sales tax at the time title was transferred to Taxpayer's friend from his employer. A few days later, a bill of sale was signed by Taxpayer and his friend, showing that \$0 was paid by Taxpayer for his receipt of the truck. This \$0 transfer was noted on documents filed with the BMV, transferring title to Taxpayer.

An audit conducted by the Indiana Department of Revenue ("Department") concluded that the Taxpayer's reported purchase price of \$0 to BMV was incorrect. The Department assessed use tax, along with interest and penalties. Taxpayer filed a written protest of the use tax assessment and waived his right to an administrative hearing. Thus, this Letter of Findings is based on the information available to the Department and provided in Taxpayer's protest file. Additional facts will be provided as necessary.

I. Gross Retail and Use Tax - Imposition.

DISCUSSION

Taxpayer challenges the use tax assessment on the transfer of title for his vehicle. He claims that sales tax was paid on the vehicle's initial purchase by the family friend, who then transferred the vehicle to Taxpayer without any financial benefit. Thus, the issue here is whether the transfer of title by Taxpayer's friend to Taxpayer is a taxable transaction.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing use tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v.*

Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A retail transaction occurs when a person "acquires tangible personal property for the purpose of resale" and "transfers that property to another person for consideration" in the ordinary course of the person's business. IC § 6-2.5-4-1; see also IC § 6-2.5-1-2. Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). Use means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is functionally equivalent to the sales tax. See *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

The transaction between Taxpayer and his friend does not meet the definition of a retail transaction. Taxpayer's friend does not, in the ordinary course of business, purchase vehicles for resale. Nor does Taxpayer's friend hold an Indiana dealer license, which would allow him to purchase and sell vehicles in Indiana. However, use tax is not exclusively imposed on retail transactions; it may be imposed on other transactions as well. Vehicles, in particular, may be subject to use tax when the vehicle:

- (1) is acquired in a transaction that is an *isolated or occasional sale*; and
- (2) is required to be titled, licensed, or registered by this state for use in Indiana.

IC §6-2.5-3-2(b)(*Emphasis added*).

The essence of a sale is the transfer of a property's title for consideration. *Maurer v. Indiana Dep't of State Revenue*, 607 N.E.2d 985, 989 (Ind. Tax Ct. 1993). Consideration for the sale of goods in Indiana must be expressed as a price. See *Monarch Beverage Co. v. Indiana Dep't of State Revenue*, 589 N.E.2d 1209, 1213 (Ind. Tax Ct. 1992). Here, Taxpayer did not give any consideration to his friend, who purchased the car from his employer. Taxpayer provided the funding for the vehicle via wire transfer directly to his friend's employer. A bill of sale for the vehicle transfer to Taxpayer from his friend lists the purchase price as "\$0 (TRANSFER OF TITLE ONLY)." No money, or even a promise for compensation, was exchanged between them.

In essence, Taxpayer's friend acted as a conduit, giving Taxpayer access to the purchase of the vehicle in question, without receiving compensation. Because consideration did not exist on both sides of the agreement, the transfer of the vehicle to the Taxpayer from his friend was not a sale and is not subject to use tax. Instead, this transaction operates as a gift. The Department's guidance on the taxation of gifts explains that the original purchaser of the vehicle must pay tax at the time of purchase, and that the recipient is not taxed upon receipt. Sales Tax Information Bulletin 40 (August 1991) available at <https://www.in.gov/dor/reference/files/sib40.pdf>. Taxpayer in this case provided a receipt from the Indiana Bureau of Motor Vehicles, showing that tax was paid on the initial transfer from the employer to the Taxpayer's friend. Therefore the tax on the vehicle has already been paid, and no tax is due on the transfer to Taxpayer from his friend. Taxpayer has met his burden and established that the use tax assessment is incorrect.

FINDING

Taxpayer's protest is granted.

April 14, 2020

Posted: 07/01/2020 by Legislative Services Agency
An [html](#) version of this document.